

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and Andrews Sport Club, Inc. (“ASCI”), with Held and ASCI individually referred to as a “Party” and collectively as the “Parties.” Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. ASCI employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Held alleges that ASCI manufactures, imports, sells, or distributes for sale in the state of California, belts that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are belts containing DEHP that are manufactured, sold, or distributed for sale in California by ASCI, including, but not limited to, those offered in connection with the *Andrew & Co. Shirt with Belt, Style No. J0401660 (#8 21556 58354 6)* (collectively “Products”).

1.4 Notice of Violation

On or about May 11, 2011, Held served ASCI and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Held’s allegation that ASCI violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties’

knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

ASCI denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by ASCI of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by ASCI of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by ASCI. This section shall not, however, diminish or otherwise affect ASCI's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean December 15, 2013.

2. INJUNCTIVE RELIEF

Commencing on the Effective Date and continuing thereafter, ASCI shall only manufacture, distribute, ship, sell, or offer to ship for sale in California Products that contain no more than 1,000 parts per million of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

3. MONETARY PAYMENTS

3.1 Payments Pursuant to Health & Safety Code Section 25249.7(b)

Pursuant to Health & Safety Code Section 25249.7(b), ASCI shall pay \$2,000 in civil penalties. Civil penalties shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment and the remaining twenty-five

percent (25%) of the penalty retained by Held. Within five days of the Effective Date, ASCI shall issue two checks for the following amounts made payable to: (a) “The Chanler Group in Trust for OEHHA” in the amount of \$1,500; and (b) “The Chanler Group in Trust for Anthony Held” in the amount of \$500.

ASCI shall also issue a separate 1099 form for its 2012 penalty payments to: (a) “Office of Environmental Health Hazard Assessment,” P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) “Anthony Held,” whose address and tax identification number shall be furnished, upon request, after this Settlement Agreement is fully executed by the Parties. Payment shall be delivered to Held’s counsel upon execution and delivery of this Agreement at the Payment address provided in Section 3.3.

3.2 Attorney Fees and Costs

The Parties reached an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, ASCI shall pay \$13,000 for all fees and costs incurred investigating, bringing this matter to the attention of ASCI’s management, and negotiating a settlement in the public interest. ASCI shall deliver its payment within five days of the Effective Date in a check payable to “The Chanler Group,” and provide a separate 1099 form for fees and costs reimbursed to The Chanler Group (EIN: 94-3171522).

3.3 Payment Address

All payments and tax forms required by this Settlement Agreement shall be delivered to the following address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Held's Release of Andrews Sport Club, Inc.

This Settlement Agreement is a full, final, and binding resolution between Held and ASCI of any violation of Proposition 65 that was or could have been asserted by Held, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against ASCI, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom ASCI directly or indirectly distributes or sells the Products, including, but not limited to, Macy's, Inc., its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on alleged unwarned exposures to DEHP contained in Products manufactured, sold or distributed for sale by ASCI in California prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Held, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against ASCI and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP in Products manufactured, sold, or distributed for sale in California by ASCI prior to the Effective Date.

4.2 Andrews Sport Club Inc.'s Release of Held

ASCI, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Held and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Held and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then ASCI may provide written notice to Held of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

7. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For Andrews Sport Club, Inc.:

Andrew Kirpalani, President
Andrews Sport Club, Inc.
5 Empire Boulevard
South Hackensack, NJ 07606

For Held:

The Chanler Group
Attn: Proposition 65 Coordinator
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

Any party may, from time to time, specify in writing to the other party a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. POST-EXECUTION ACTIVITIES

Held agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

10. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

11. AUTHORIZATION


The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: December 14, 2012

Date: _____

By: 
Anthony E. Held, Ph.D., P.E.

By: _____
Andrew Kirpalani, President
Andrews Sport Club, Inc.

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AGREED TO:

Date: _____

By: _____

Anthony E. Held, Ph.D., P.E.

AGREED TO:

Date: _____

By: _____

Andrew Kishpalani, President
Andrews Sport Club, Inc.